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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,378	11/18/2003	John R. Schiltz	MKAY:032US/10310699	4382

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EXAMINER
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LANDAU, SHARMILA GOLLAMUDI

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/716,378	Applicant(s) SCHILTZ, JOHN R.	
	Examiner Sharmila Gollamudi Landau	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 21-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-20 and 45-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group I, claims 1-20 and 45-46 and the species: (a) glucose; (b) glucosamine; (c) essential amino acids; and (d) sodium bicarbonate, in the reply filed on 8/31/07 is acknowledged. Claims 15 and 21-44 are withdrawn as being directed to a non-elected species and invention. **Claims 1-14, 16-20 and 45-46** are directed to the elected to the invention.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 10-11, 14, 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 10 recites "the composition of claim 1, wherein the at least one regulator of lipid metabolism is selected from the group consisting of sodium citrate, linoleic acid, linolenic acid, biotin, glucose, sodium acetate, mevalonic acid, and serine, **or derivatives thereof.**"

Claim 11 recites "the composition of claim 1, wherein the at least one regulator of polysaccharide metabolism is selected from the group consisting of galactosamine, glucosamine, xylose, and magnesium chloride, **or derivatives thereof.**"

Claim 14 recites "the composition of claim 13, wherein the amino acid is an essential amino acid is selected from the group consisting of arginine, histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan, and valine, **or derivatives thereof.**"

Claim 16 recites “the composition of claim 1, wherein the at least one regulator of nucleic acid metabolism is selected from the group consisting of sodium bicarbonate, aspartic acid, sodium phosphate, niacin, glutamine, and glucose, **or derivatives thereof.**”

These claims are vague and indefinite since it is unclear what “or derivatives thereof” refers to, i.e. derivative of what? If applicant intends, for instance in claim 10, to refer to derivatives of sodium citrate, linoleic acid, etc., then it is unclear what is encompassed by the term derivatives since the specification does not teach derivatives of each components to provide a skilled artisan the metes and bounds of the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3, 5-20, 45-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Wechter et al (7,235,397).**

Wechter discloses a solid powder composition comprising (a) about 1.2% glucose, (c) about 4.85% L-methionine, (b) about 4.85% N-acetyl glucosamine, and (d) about 0.048% sodium bicarbonate, among other ingredients. The solid composition is then mixed with water to provide a solution. See example 1. Note the recitation, “the composition is formulated as a cosmetic blend” is a recitation of intended use which does not impart a structural limitation and

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thus is not given patentable weight. Note claims 7-9 are directed to the intended use of the composition and are not given patentable weight since they do not impart a structural limitation.

**Claims 1-3, 5, 7-9, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by De Labbey et al (5,648,069).**

De Labbey teaches a lotion comprising (b) 1.1% magnesium chloride, (d) 0.4% aspartic acid, (c) 0.4% isoleucine, and (a) 0.4% serine, among other components in water. see column 4. Note claims 7-9 are directed to the intended use of the composition and are not given patentable weight since they do not impart a structural limitation.

**Claims 1-4, 7-14, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Oleniacz et al (3,957,971).**

Oleniacz discloses a composition comprising (a) about 0.97% glucose, (b) about 0.088% glucosamine, (c) about .01% leucine, and (d) 4.2% aspartic acid, among other components in the claimed range. This mixture is incorporated into liposomes and further incorporated into a moisturizing composition comprising glycerin, stearic acid, and potassium stearate. Note this cream is an emulsion. See example 19. Note the recitation, "the composition is formulated as a cosmetic blend" is a recitation of intended use which does not impart a structural limitation and thus is not given patentable weight. Note claims 8-9 are directed to the intended use of the composition and are not given patentable weight since they do not impart a structural limitation.

### ***Conclusion***

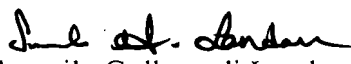
Claims 1-14, 16-20 and 45-46 are rejected.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila Gollamudi Landau whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Sharmila Gollamudi Landau  
Primary Examiner  
Art Unit 1616

9/14/07